SUPREME COURT OF THE UNITED STATES.

No. 429.

FREDERIC BRONSON, EXECUTOR OF THE LAST WILL AND TESTAMENT OF ARTHUR BRONSON, DECEASED, PLAINTIFF IN ERROR,

vs.

PETER RODES.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Peter Rodes, plaintiff, and Frederic Bronson, executor of the last will and testament of Arthur Bronson, deceased, defendant therein, and which record and proceedings remain before you, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause in the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty,
2 statute, or commission, a manifest error hath happened to the great damage of the said Frederic Bronson, executor as aforesaid, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] KENNETH G. WHITE, *Clerk.*
WM. D. WHITE, *Att'y.*

[50c. in. rev. stamp, cancelled.]

3 I certify that a copy of the within writ was this day lodged for the adverse party in the office of the clerk of the court of appeals of the State of New York, where the record remains.

P. N. JONES,
Clerk Court of Appeals.

January 10, 1867.

4 The answer of the judges of the court of appeals of the State of New York, in the within writ named, doth certify, under the seal of our said court, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof mention in said writ is made, with all things touching or in anywise concerning the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court.

[SEAL.] CAMPBELL H. YOUNG,
Deputy Clerk of the Court of Appeals of the State of New York.

5 The United States of America to Peter Rodes, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December, A. D. 1867, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of New York, wherein Frederic Bronson, executor of the last will and testament of Arthur Bronson, deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error as in the said writ mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Nelson, one of the judges of the Supreme Court of the United States, this 7th day of January, in the year of Lord one thousand eight hundred and sixty-seven.

S. NELSON.

William D. White, att'y for pl'ff in error, 15 Nausau st., New York City.

6

7 In the Supreme Court of the United States.

FREDERIC BRONSON, executor of the last will and testament of Arthur Bronson, deceased, plaintiff in error,
vs.
PETER RODES, defendant in error.

To the above-named Peter Rodes:

Please take notice that a copy of the writ of error allowed herein was, on the 10th day of January instant, lodged for you in the office of the clerk of the court of appeals of the State of New York, in the city of Albany.

Jan. 10, 1867.

Yours, &c.,

WM. D. WHITE,
Att'y for Pl'ff in Error, 15 *Nassau St., New York City.*

8 In the Supreme Court of the United States.

FREDERIC BRONSON, executor of the last will and testament of Arthur Bronson, deceased, plaintiff in error,
vs.
PETER RODES, defendant in error.

UNITED STATES OF AMERICA,
State of New York, City of Buffalo, County of Erie, ss:

On the twenty-second day of January, in the year of our Lord one thousand eight hundred and sixty-seven, before me, a notary public for the State of New York duly authorized to administer oaths in the county aforesaid, personally appeared James M. Gallagher, of the city of Buffalo, in said county of Erie, who being by me duly sworn, made oath that on the 19th day of January, A. D. 1867, at the town of Clarence, Erie county, New York, he served upon Peter Rodes above named, personally, a copy of the foregoing citation by delivering such copy citation to the said Peter Rodes personally, and
9 leaving the same with him. Deponent further says that at the same time he also delivered to and left with the said Peter Rodes a copy of the writ of error allowed in this cause, and also a copy of the bond to the defendant accompanying the same, with a notice of the filing thereof; that he also exhibited the said Peter Rodes the foregoing original citation; and deponent knew the person so served to be the defendant above named. Deponent at the same time delivered to the said Peter Rodes a copy of the foregoing notice, that a copy of the writ was lodged for him in the clerk's office of the court of appeals of the State of New York on the 10th day of January instant.

In testimony whereof I have hereunto subscribed my name and affixed my official seal at the said city of Buffalo, on the day and year aforesaid.

JAMES M. GALLAGHER.
[SEAL.] BENJ. H. AUSTIN, JR.,
Notary Public.

Sworn before me this 22d day of January, 1867.
BENJ. H. AUSTIN, JR.,
Notary Public, County of Erie, State of New York.

10

11 Supreme court, Erie county.

PETER RODES
agt.
FREDERIC BRONSON, executor and trustee of the last will and testament of Arthur Bronson, deceased.

This action was commenced on the 7th day of March, 1865.
The summons and complaint was then served.
The answer was served on the 23d day of March, 1865.

The trial took place on the 30th day of August, 1865.

Judgment dismissing the complaint was entered 18th September, 1865.

Appeal perfected by plaintiff, 28th September, 1865.

The appeal was argued at Buffalo, Feb. term, 1866.

Judgment was rendered by the general term, May 7, 1866, reversing the judgment at special term, with costs, adjudging the mortgage in suit paid, and requiring the defendant to satisfy the same of record.

The appeal of the defendant from the judgment of the general term was perfected 28 May, 1866.

L. L. LEWIS,
Atty. for Plaintiff, Respondent.
JOHN J. TOWNSEND,
Atty. for Defendant, Appellant.

12 Supreme court, Erie county.

PETER RODES, plaintiff,
against
FREDERIC BRONSON, executor and trustee under the last will and testament of Arthur Bronson, deceased, defendant.

To the defendant:

You are hereby summoned to answer the complaint in this action, of which a copy is herewith served upon you, and serve a copy of your answer on me, at my office in the city of Buffalo, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint as aforesaid, the plaintiff will apply to the court for the relief demanded in the complaint.

L. L LEWIS,
Plff's Attorney, Buffalo.

[50-ct. int. rev. stamp.]

13 Supreme court, Erie county.

PETER RODES
against
FREDERIC BRONSON, executor and trustee under the last will and testament of Arthur Bronson, deceased. } Complaint.

The plaintiff, for cause of action against the said defendant, says: That on or about the sixteenth day of December, 1851, one Christian Metz, and Barbara, his wife, to secure the payment of the sum of fourteen hundred dollars to the defendant, as executor and trustee under the last will and testament of Arthur Bronson, deceased, did execute and deliver to said Bronson, executor, &c., as aforesaid, their mortgage upon the following described piece or parcel of land "situate in the town of Clarence, county of Erie, and State of New York,

being part of lot No. 4, section eleven, township twelve, range six, bounded as follows: north nineteen chains and ninety-seven and one-half links, by lot number three, section twelve; south nineteen chains and ninety-seven and one-half links, by lot number three, section eleven; west by the west part of said lot number four, owned by Nicholas and Noah Canner, fifty-nine chains, and east by a line parallel with the west line, fifty-eight chains and sixty-seven links, containing one hundred and seventeen and one-half acres of land. Excepting and reserving therefrom seventeen and one-half acres from the south end, deeded to Thomas Durbrow, and ten and one-half acres adjoining the same, deeded to Christopher Post; also excepting one acre from the northwest corner, deeded to Christian Overhattser, and also one-half acre adjoining Christopher Post's land, occupied by him.

Which mortgage was recorded in the Erie county clerk's of-
14 fice, on the 20th day of December, 1851, in Liber 88 of Mortgages, page 59, to which the plaintiff hereby refers.

And said plaintiff further says, that said premises were duly conveyed by said Christian Metz to Abram Metz and Benjamin Metz, by deed bearing date November 23d, 1860, and duly recorded in the Erie county clerk's office, in Liber 217 of Deeds, page 135, reference to which is hereby made. And subsequent to said last conveyance, and on the 25th day of March, 1863, and previous to the commencement of this action, said Abram and Benjamin Metz, and their wives duly conveyed said premises to this plaintiff by deed bearing date said 25th day of March, 1863, and recorded in the Erie county clerk's office, in Liber 217 of Deeds, page 459, reference to which is hereby made. Said conveyance was made subject to the said mortgage to said Bronson, defendant, and this plaintiff, by the terms of said deed, assumed to pay said mortgage, and agreed to pay the same as part of the purchase price of said premises, and this plaintiff ever since the said conveyance has been and still is the owner in fee of said premises.

Said plaintiff further says that said mortgage was at the time said premises were so conveyed to this plaintiff by said Metz, a subsisting lien upon said premises, and was due and unpaid in full, except that the interest which had accrued thereon had been paid.

Said plaintiff further says, that said mortgage by its terms provided that the said sum of $1,400 should be paid in gold and silver coin, lawful money of the United States, to the said Frederic Bronson, executor and trustee aforesaid, with interest payable semi-annually, viz: on the first days of January and July in each year and every year, in coin as aforesaid, according to ten certain promissory notes given for said interest, bearing even date therewith, which said principal shall be paid as aforesaid, and the said payments, both of principal and interest, are to be made in such place in the city of New York as the said Frederic Bronson, executor and trustee, &c., his legal representatives, successor or successors, or assigns, shall in writing from time to time appoint, and in default of such appointment, then and in that case to the credit of the said Frederic Bronson, executor and trustee, &c., his legal representatives, successor or

15 successors, or assigns, in the Merchants' Bank of the said city, with a proviso thereunder written, whereby it is expressly agreed, and fully understood, that if default be made in the payment of any of the said promissory notes which have been given for the interest on the principal sum above mentioned as aforesaid, and any portion thereof should remain due and unpaid for the space of thirty days after the same shall become due and payable according to the above condition, then and in that case the principal sum above mentioned, together with all arrearages of interest thereon, should, at the option of the said Frederic Bronson, ex. and tr., &c., his legal representatives, successor or successors, or assigns, thereupon become due and payable, and may be demanded immediately thereafter, anything therein before expressed to the contrary notwithstanding, as by the said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear.

Said plaintiff further says that the said Bronson failed to appoint any place for the payment of the principal or interest of said mortgage, and that on or about the 9th day of January, A. D. 1865, this plaintiff caused to be personally tendered to said Bronson, at his place of business in the city of New York, the sum of $1,507, the amount then due upon said mortgage, in United States treasury legal tender notes—commonly known as greenbacks—in full payment and discharge of said mortgage. and then and there requested the said Bronson, executor, &c., as aforesaid, to accept the same and execute a satisfaction of said mortgage which this plaintiff had caused to be prepared in due form of law and presented to said Bronson at such time.

And said plaintiff further says that said Bronson refused to accept said money so tendered to him, as aforesaid, and also refused to execute said satisfaction of mortgage.

Said plaintiff further says that he caused said fifteen hundred and seven dollars to be on said day deposited in the Merchants Bank, in the city of New York, to the credit of said Frederic Bronson, executor and trustee as aforesaid, and gave said Bronson due notice thereof.

16 Said plaintiff further says that said Bronson still holds said mortgage, and claims the same to be a lien upon the said premises of this plaintiff, and refuse to discharge the same of record.

Said plaintiff therefore demands judgment of this court, satisfying and discharging said premises from the lien and effect of said mortgage, and compelling the said Bronson to execute and deliver to the plaintiff a satisfaction of said mortgage, in due form of law, and that said defendant be compelled to pay the costs of this action, and that the said plaintiff have such other or further relief in the premises as shall be just and proper to grant.

L. L. LEWIS,
Plaintiff's Attorney.

ERIE COUNTY, *City of Buffalo, ss:*

Peter Rodes, being duly sworn, says: That he resides in the town of Clarence, in said county of Erie; that he is the plaintiff in the

above entitled action; that he has heard the foregoing complaint read, and knows the contents thereof; that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

PETER RODES.

Affirmed before me, this 23d day of February, 1865.

CHARLES HUETTER,
Comm'r of Deeds for Buffalo.

Answer.

17 Supreme Court.

PETER RODES
against
FREDERIC BRONSON, executor and trustee under the last will and testament of Arthur Bronson, deceased.

And the defendant, Frederic Bronson, executor and trustee under the last will and testament of Arthur Bronson, deceased, by John J. Townsend, his attorney, answering the complaint herein, respectfully shows to this court:

That on or about the sixteenth day of December, A. D. 1851, the defendant did, at the request of Christian Metz, in the complaint named, lend and advance to the said Christian Metz the sum of fourteen hundred dollars, referred to in the complaint as secured to be paid by the mortgage in the complaint mentioned, upon the agreement expressly made at the time, and stated in writing, that the same should be repaid in gold or silver coin, and that with the definite intent to secure payment of the said sum in coin, exclusive of any other medium of payment, the said Christian Metz did execute and deliver to the defendant, on or about the day aforesaid, a bond bear-date the day aforesaid, in the penal sum of twenty-eight hundred dollars in gold or silver coin, lawful money of the United States of America, to be paid unto this defendant, his successor or successors, or assigns, for which payment, well and truly to be made, the said Christian Metz did thereby bind himself, his heirs, executors, and administrators, and there was a condition under the said bond written in substance, that if the said Christian Metz, his heirs, executors, or administrators, should pay unto this defendant, his successor or successors, or assigns, in gold or silver money as aforesaid, the sum of fourteen hundred dollars, on the first day of January, in the year one thousand eight hundred and fifty-seven, with interest for the
18 same to be computed from the date of said bond, at the rate of seven per cent. per annum, to be paid semi-annually, viz: on the first day of January and July in each and every year, in coin as aforesaid, until the said principal shall be paid, such payments, both of principal and interest, to be made at such place in the city of New York as this defendant, his successor or successors, or assigns, should

in writing from time to time appoint, and in default of appointment, then, and in that case, to the credit of this defendant; his legal representatives, successor or successors, or assigns, in the Merchants Bank of the city of New York, then the said bond to be void; else to remain in full force and virtue.

And that the said Christian Metz and Barbara, his wife, with the like definite intent to secure further the payment of the said sum of money mentioned in the condition of the said bond in gold or silver coin, exclusive of any other medium of payment, did at the same time execute under their hands and seals, duly acknowledge and deliver to the defendant the mortgage which is referred to in the complaint, and which defendant believes is substantially set forth therein, and for greater certainty the defendant begs leave to refer to the said bond and mortgage now in his possession, or to the record of said mortgage.

And defendant has no knowledge or information sufficient to form a belief what amount in notes, or what description of notes were tendered to him as alleged in the complaint, and he says the amount due on the said bond and mortgage on the ninth day of January, A. D. 1865, exceeded the sum in that behalf alleged.

And this defendant denies that the plaintiff, on the ninth day of January, A. D. 1865, or at any other time, caused fourteen hundred and seven dollars, or any other sum, to be deposited in the Merchants' Bank in the city of New York, to the credit of the defendant, in gold or silver coin, or gave the defendant notice thereof.

And the defendant avers that the plaintiff has failed to comply with the condition of said bond and mortgage by neglecting to pay in gold or silver money as aforesaid the said sum of fourteen hundred dollars, or the interest thereon from the first day of January, A.
10 D. 1864, and the same in gold or silver coin, with interest from the day last aforesaid, is due and unpaid to this defendant.

And defendant denies that he ever refused to execute a satisfaction piece of said mortgage, or discharge the same of record upon the satisfaction thereof; and he insists that the plaintiff is not entitled to judgment satisfying and discharging the said premises from the lien and effect of said mortgage, and compelling the defendant to execute and deliver to him a satisfaction thereof, or for the costs of this action.

And the defendant, on or about the fifth day of March, 1864, offered to extend the said mortgage, and is now willing and offers to extend the term of payment of said mortgage for the period of ten years, and he prays affirmative relief in this, that unless the plaintiff elect to extend said mortgage, an account may be taken by and under the direction of this honorable court, of what is due and owing to this defendant for principal and interest on said mortgage, according to the condition of said bond, and that the plaintiff may be adjudged specifically to perform the condition of the bond, and to pay to the defendant, in gold or silver coin as aforesaid, what may be found due to him on taking said account, together with its costs for this action, by a day to be appointed by this court, or in default thereof, that the

plaintiff, and all persons claiming under him, may be debarred and foreclosed of and from all right and equity of redemption in and to the mortgaged premises, and every part thereof, and that the defendant may have such further and other relief as may be meet, and that the defendant may have judgment for the costs of this action.

JOHN J. TOWNSEND,
Attorney for Defendant.

CITY AND COUNTY OF NEW YORK, *ss:*

Frederic Bronson, of said city, being duly sworn, says: That he is the defendant above named; that the foregoing answer is true
20 of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

FREDERICK BRONSON.

Sworn to before me, this 23d day of March, A. D. 1865.
WALTER H. CALHOUN,
Notary Public, N. Y. City.

In supreme court.

PETER RODES
against
FREDERIC BRONSON, executor and trustee under the last will and testament of Arthur Bronson, deceased.

Afterwards, that is to say, on the thirtieth day of August, 1865, at a special term of the supreme court, held at the court-house, in the city of Buffalo, in and for the county of Erie, by the Hon. Martin Grover, one of the justices of this court, the above-entitled action came on for trial, and the following was stipulated as the evidence in said action:

On the 16th day of December, 1851, one Christian Metz borrowed of the defendant one thousand and four hundred dollars, and to secure the repayment thereof gave his bond conditioned for the payment thereof and the mortgage described in the complaint in said action, by the terms of which said mortgage the said Metz agreed and promised to pay the said defendant, as executor and trustee aforesaid, the sum of one thousand and four hundred dollars in gold or silver coin, lawful money of the United States of America, on the first day of January, 1857, with interest for the same, to be computed from the said date of the said bond and mortgage, at the rate of seven per cent., which said interest to be paid semi-annually, viz: on the first day
21 of January and July in each and every year, in coin as aforesaid, and the payments, both of principal and interest, to be made at such place, in the city of New York, as the said defendant, executor, trustee, &c., his legal representatives, successor or successors, or assigns, shall in writing, from time to time appoint, and in

default of such appointment, then and in that case to the credit of the said defendant, executor, trustee, &c., his legal representatives, successor or successors, or assigns, in the Merchants' Bank of said the city of New York. That said mortgage was duly recorded in the Erie county clerk's office, in Liber 88 of Mortgages, at page 59, December 20, 1851. That subsequent to the giving of said mortgage and on the 25th day of March, 1853, the said Metz conveyed the said premises covered by said mortgage to the plaintiff, and the plaintiff assumed to pay the mortgage aforesaid. That the plaintiff, after purchasing said premises, paid the interest upon said mortgage as it accrued from time to time, up to and including the interest due on the 1st day of January, 1864.

That on the 10th day of January, 1865, the said plaintiff, then and still being the owner in fee of the premises described in the said mortgage, tendered to the defendant, in the city of New York, $1,507 in United States legal tender notes, and requested defendant to accept the same in payment of the said mortgage, which defendant refused to do, on the ground that the mortgage should be paid in gold or silver instead of legal tender notes. That the amount of principal and interest due on said bond and mortgage, at the time of such tender, did not exceed the sum of $1,507, according to the contions thereof.

That the defendant was informed at the time of the tender that the plaintiff was the owner of the premises covered by the said mortgage. That the plaintiff, at the time of the tender of said money, presented to defendant a discharge of said mortgage to be executed by defendant. That the said defendant refused to execute said discharge. That thereupon the said plaintiff deposited said money in the Merchants' Bank of New York city, and gave defendant written notice thereof, and that said money still remains in said bank,
22 deposited to the credit of defendant, as was stated in the said notice.

That at the time when the tender of said legal tender notes was made to the defendant, their market value in the city of New York, as compared with gold or silver coin, lawful money of the United States, was as one to two and twenty-five-hundredths; that is, one dollar in such gold or silver coin was equal in market value to two dollars and twenty-five cents in such legal tender notes. This action was commenced February 27th, 1865, and said action having been submitted, the said judge found as proved before him, the foregoing facts, and found as his conclusions of law from said facts: That the said bond and mortgage could not be satisfied by a tender of said legal tender notes; that the same have not therefore been paid or satisfied; that the conditions thereof have not been performed, and that the defendant is entitled to a judgment that the complaint be dismissed, with costs.

And the said plaintiff then and there duly excepted to the decision of said judge, and his conclusion of law that the said bond and mortgage could not be satisfied by a tender of said legal tender notes.

And the said plaintiff also then and there duly excepted to the de-

cision of the said judge and his conclusion of law, that the said bond and mortgage by reason of said tender have not been paid or satisfied.

And the said plaintiff also then and there duly excepted to the decision of the said judge and his conclusion of law, that the conditions of the said bond and mortgage have not been performed, and that the defendant is entitled to a judgment that the complaint be dismissed, with costs.

23 *Judgment.*

Supreme court, Erie county.

PETER RODES
against
FREDERIC BRONSON, executor and trustee under the last will and testament of Arthur Bronson, deceased.

This action having been at issue and triable by the court, and trial having been had at a special term of this court, held at the court house in the city of Buffalo, in the county of Erie, on the thirtieth day of August, 1865, before the Honorable Martin Grover, justice, presiding, whose decision in writing has been filed with the clerk, whereby judgment is ordered that the complaint be dismissed, with costs.

Now, on motion of John J. Townsend, attorney for the defendant, it is ordered and adjudged that the complaint in this cause be, and the same is hereby, dismissed, and that the defendant, Frederick Bronson, executor and trustee under the last will and testament of Arthur Bronson, deceased, recover of the plaintiff, Peter Rodes, the sum of fifty-seven dollars and seventy-nine cents, his costs and disbursements in this action, and that he have execution therefor.

Judgment signed this 18th day of September, 1865.

J. H. FISHER, *Dep. Clerk.*

24 Supreme court, Erie county.

PETER RODES
against
FREDERIC BRONSON, executor and trustee under the last will and testament of Arthur Bronson, deceased.

You will please take notice that the plaintiff in the above-entitled action hereby appeals to the general term of the supreme court, from a judgment entered in the above-entitled action in favor of said defendant and against said plaintiff for the sum of fifty-seven dollars and seventy-nine cents, costs and disbursements, on the 18th day of September, 1865.

Dated September 28th, 1865.

Yours, &c.,

L. L. LEWIS, *Appellant's Att'y, Buffalo, N. Y.*

To John J. Townsend, esq., respondent's attorney, and Lewis P. Dayton, esq., clerk of Erie county.

25 PETER RODES, appell't,
agst.
FREDERIC BRONSON, executor, &c., respt.

L. L. Lewis, general term, 8th judicial district, Buffalo, May 11th, 1866.

Present: Grover, Marvin, Davis, and Daniels, H. R. Selden.

Judgment reversed, with costs, and judgment directed for the plaintiff; adjudging mortgage paid, and requiring defendant to satisfy the same of record. Opinions by Daniels, J., and Grover, P. J., dissenting.

(A copy.)

T. B. WRIGHT,
Sp. Dp. Clerk.

Judgment.

Supreme court, Erie county.

PETER RODES, plaintiff,
agst.
FREDERIC BRONSON, executor and trustee under the last will and testament of Arthur Bronson, deceased, defendant.

This action having been brought by the plaintiff, Peter Rodes, the owner of the premises covered by the mortgage hereafter described, for the purpose of compelling the defendant, Frederic Bron-
26 son, as executor and trustee under the last will and testament of Arthur Bronson, deceased, to satisfy and charge of record, a certain mortgage, executed by one Christian Metz and Barbara, his wife, to the said defendant as executor and trustee aforesaid, and bearing date the sixteenth day of December, A. D. 1851, recorded in the Erie county clerk's office, in Liber 88 of Mortgages, page 59, on the 20th day of December, 1851, and said action having been brought to trial at a special term of the supreme court, held at the court-house in the city of Buffalo, in and for the county of Erie, on the 30th day of August, 1865, by and before the Honorable Martin Grover, justice, and the judgment of the court having been entered in favor of the defendant and against the said plaintiff, dismissing the complaint of the said plaintiff, with $57 79-100 costs, and the said plaintiff having appealed from the said judgment to the general term of said supreme court, and the same having been heard, and the decision of the said court thereon having been filed, whereby the said judgment was in all things reversed, and judgment directed for the said plaintiff, adjudging the said mortgage paid, and requiring the said defendant, Frederic Bronson, as executor and trustee aforesaid, to satisfy the same of record, together with the costs and disbursements of the said plaintiff in said action.

Now, therefore, on motion of L. L. Lewis, the attorney for the said plaintiff, it is ordered, adjudged, and decreed that the said

judgment so as aforesaid entered be, and the same is in all things, reversed, and the said mortgage is hereby adjudged and decreed to be paid and satisfied, and said defendant, Frederic Bronson, as executor and trustee under the last will and testament of Arthur Bronson, deceased, is hereby directed and required to execute, acknowledge, and deliver to the said plaintiff, Peter Rodes, (upon the said plaintiff presenting the same to said defendant for his execution and acknowledgment,) a satisfaction piece duly satisfying of record the said mortgage, and deliver to said plaintiff the said mortgage, and the bond accompanying the same, and that the said defendant, Frederic Bronson, executor and trustee as aforesaid, pay to the said
27 plaintiff, Peter Rodes, the sum of one hundred and sixty-one dollars and ninety-one cents for his costs and disbursements in said action.

Judgment signed May 21st, 1866.

J. H. FISHER, *Dp. Cl'k.*

Supreme court.

PETER RODES, respondent,
against
FREDERIC BRONSON, executor and trustee of the last will and testament of Arthur Bronson, deceased.

Please to take notice, that the appellant appeals from the judgment entered on the decision of the general term in this action, and from every part thereof, to the court of appeals.

Dated May 28th, 1866.

Yours, &c.,

JOHN J. TOWNSEND,
Att'y for Appellant.

To L. P. Dayton, esq., clerk of the county of Erie, and C. L. Lewis, esq., att'y for respondent.

ERIE COUNTY CLERK'S OFFICE, *ss:*

I do hereby certify that I have compared the foregoing copies of judgment rolls and notices with the original judgment rolls and notices entered and on file in this office, and that the same are true and correct copies of the said originals, and of the whole of each thereof.

Witness my hand and the seal of the county of Erie, this 30th day of May, 1866.

[SEAL.] J. H. FISHER, *Dp. Clk.*

28 In court of appeals.

STATE OF NEW YORK:

At a court of appeals for the State of New York, held at the capitol, in the city of Albany, on the 31st day of December, A. D. 1866.

Present, Hon. Henry E. Davies, chief judge, presiding.

32 STATE OF NEW YORK, *City and County of New York, ss:*

On the fourth day of January, one thousand eight hundred and sixty-seven, before me came Frederic Bronson, Edward M. Townsend, and John J. Townsend, all personally known to me, and also known to me to be the individuals described in and who executed the foregoing bond, and severally acknowledged that they executed the same.

WALTER H. CALHOUN,
Notary Public City and County of New York.

33 To Peter Rodes:

Please take notice that the bond, of which the within is a copy, was filed in the office of the clerk of the court of appeals of the State of New York, on the 10th day of January, 1867, at Albany.

Yours, &c.,

WM. D. WHITE,
Att'y for Pl'ff in Error.

Filed Jan. 10, 1867.

O

December Term, 1868.

IN THE GOLD CASES.

BRIEF

(AS TO THE VALIDITY AND EFFECT OF CONTRACTS PAYABLE IN SPECIE)

BY

CLARKSON N. POTTER,

OF NEW YORK.

NEW YORK:
SAMUEL HAMILTON, BOOK, LAW AND JOB PRINTER,
No 61 Cedar Street, Adjoining Post Office.
1868.

Assuming, as I shall for this discussion, that Congress had power to declare Treasury notes a legal tender in payment of private debts, the question whether a promise to pay a certain number of specie dollars, can be discharged by a tender of the stipulated number of Treasury-note dollars, seems to depend upon whether there be, *in fact*, legal-tender dollars of different actual values ; and if so, whether courts are prevented, either by positive enactment or public policy, from recognizing this existing fact.

First Point.—As a matter of fact, there are four legal-tender dollars of different value :

1. The gold dollar coined *since* 1834, of the value of 100 cents, (meaning by a cent, 1-100th of a gold dollar of that coinage);
2. The gold dollar coined *before* 1834, of the value of 106 of the same cents ;
3. The silver dollar, now of the value of 103 of the same cents ;
4. The Treasury note dollar, now of the value of 75 of the same cents.

I do not refer to the fractional silver coinage, since that is *not* legal-tender, except for very small sums.

The Court will find, herewith, a table of the coins struck at the Government Mint, showing their respective fineness, weight and value, made by Mr. Edelman, Deputy Treasurer of the Government at New York. The note and corrections in writing (p. 14,) are by him.

The relative value of the Treasury-note dollar appears, I presume, as proof in these different gold cases. In speaking of it now, I refer to the current value of the day.

These differences in the value of the coin dollars were not the result of a design by Government to coin dollars of different values; but were the result of changes in the relative values of gold and silver. The gold and silver money of the coinage of 1792 were, at first, of equal intrinsic value. But, by 1834, gold had so appreciated, that one hundred gold dollars of the prior coinage were worth about one hundred and six silver dollars. Government then depreciated the gold coinage six per-cent., intending to make the gold of its subsequent coinage equal in intrinsic value, dollar for dollar, with the silver coinage. Since 1848, however, the value of gold has moved in the *reverse* direction; so that the gold dollar coined *since* 1834, is three per-cent. *below* the constant silver dollar, which it equalled in value in 1834; while the gold coined *before* 1834, is now but three-per-cent. *above* the silver dollar, which it exceeded in value six-per-cent. in 1834, but only equalled in value in 1792.

Now, if the existing differences between these "dollars" can be regarded, let us consider the effect of contracts made with reference to such differences.

SECOND POINT.—Although these dollars are not equal in actual value, yet, as each is a "dollar," it can *therefore* be used to discharge contracts pay-

able simply in "dollars," *because it complies with the terms of the contract.*

When a man loans money, payable merely in "dollars," he must receive payment in whatever the law may declare to be "dollars" when the contract is enforced.

The dollar may have *ap*preciated in value (as was proposed in 1853,) and the creditor would gain; or it may have *de*preciated, and the creditor would lose: but, as both parties *have agreed* to take the risk of the law, and to pay and to receive what the law might fix to be "dollars," the risk is equal and the contract *properly* fulfilled according to its own terms by such payment. (Story on Promissory Notes, §390).

So, if a man were to contract to deliver one thousand barrels of apples, a delivery of so many barrels of merchantable apples—whether pippins, greenings, or other variety of apples—would meet the terms of the contract and satisfy it. Or, if he were to contract to deliver one thousand cords of "hard wood," he could meet that contract by a delivery of the stipulated quantity of hickory, beech, or oak wood; since each of these is a hard wood, and so meets the terms of the contract. If by the contract it was intended to require a particular variety of hard wood, the contract should so have specified. Otherwise, it leaves with the *debtor* the selection of the variety of the general article agreed to be paid.

But where, in fact, different varieties of one article exist, and the parties contract for the delivery of a particular variety, such a contract is not satisfied by the delivery of an inferior variety of the same article.

Therefore, if A were to contract to deliver B one thousand barrels of "pippins," he could not meet that obligation by tendering one thousand barrels of inferior fruit.

Or, if he contracted to deliver one thousand cords of "*hickory* wood," he could not satisfy that agreement by

the delivery of one thousand cords of "*beech* wood." Both the pippin and the greening are apples, and each is good to meet a contract payable generally "in apples;" both hickory and beech are hard wood, and good to meet a contract payable generally in hard wood. Each variety has, for contracts payable generally in the class to which it belongs, a like power, because within the terms of the contract. But the greening is not the equal of the pippin. In no proper sense whatever is it of the same legal value; since a portion only of the latter may be sold or exchanged for enough of the former to meet the contract. And so of the other homely illustration of the hard woods.

Upon the principle, then, of having respect first "to that which is agreed, which is the very basis and foundation of law," and protected by the fundamental law itself, a man who has contracted to deliver one thousand dollars of the coinage prior to 1834, should not be allowed to discharge his obligation by the tender of a thousand gold dollars of the present coinage (worth only nine-tenths of the other)—*unless, indeed*, there be some positive enactment or some public policy to oblige the Court to regard these things, unequal in themselves, as equal in law: nor, having agreed to pay one thousand specie dollars generally, (which gives him the choice of coinage), should he be allowed to meet his obligation by the tender of one thousand dollars in paper notes, worth nearly a third less than the same sum in coin.

We have, therefore, to enquire whether parties are prevented from contracting with reference to, or Courts are prevented from recognizing, this difference in the actual value of the dollars that Government has put out. When the law declared the Treasury notes "lawful money and a legal-tender," did it mean that a Treasury-note dollar should be a lawful dollar, and so meet all contracts payable generally in "dollars;" or did it further mean that it should be taken and deemed not only as a dollar, but as the equal of the coined dollars?

THIRD POINT:—No value has been prescribed for the Treasury note dollar by Statute; nor is there anything in the Law to prevent private parties from contracting with reference to the actual existing difference in value of the different dollars.

Assuming that Congress had power to pass such a law, it might have declared, not only that Treasury notes should be legal dollars, but that in law they should have the same value as coin dollars; and then, in the eye of the law, the paper would have to be regarded as equal to the coin, and by a legal fiction the Court would be forced to treat the less and the greater as equal.

But Congress has not so legislated. It has simply declared that the Treasury note shall be a legal tender in payment of debts as a "dollar." As such, it is efficacious to satisfy all debts, according to the amount of the debts, estimated in dollars. But estimated *in which dollars?* Estimated in the *legal dollar of least value; for it is in that dollar that debts are always computed, since the debtor has the option to pay the debt in such dollars of least value.*

A man promises to deliver one hundred barrels of flour, and what is the amount of that debt? Why, the value of the flour in Treasury note dollars, now, one-third more than if computed in coin dollars.

And so the damages for the conversion of property, or the value of a bushel of corn, or of a month's wages, or the extent of an injury, and every other debt or decree payable generally in dollars, is computed now in the Treasury-note dollar, *i. e.*, in the lowest of the four legal-tender dollars in which debts can be paid and judgments discharged. Congress might have said the Treasury-note dollar shall not only be a legal tender in

payment of all debts, but also that it shall be received as equal in value to a dollar in specie; and then in every action, in computing the damages, we would have a right to ask what the value of the article sold or converted—or the amount of the service rendered—or injuries suffered—were, computed in specie dollars, and to limit the recovery to that sum.

Such, however, has not been the course of justice, which has distinguished, (because allowed to distinguish), between these unequal dollars; and, in giving judgment, has assessed damages in the dollar of least value in which the judgment could be discharged—assessed them in that dollar because the law has given the debtor the right to discharge the judgment in that dollar—assessed what it was just he should pay, *according to the measure by which he is allowed to pay it.*

And there was indeed no occasion for legislation, fixing the value of the Treasury-note dollar; but the contrary. Probably, not the ten-thousandth part of the debts due in the country, was due in any particular specified dollar, but only in "dollars" generally; and every possible advantage or credit which could be conferred on Government paper was given it, by enabling it to meet obligations payable in "dollars" generally, in which the great mass of the engagements of the country were expressed.

FOURTH POINT.—Congress, by its legislation and the Government, by its practice, have uniformly recognized the difference in value between the coin and paper dollar.

A. *The legislation of Congress.*

The Legal Tender Act itself discriminates, (§ 1.),

against the Treasury-note dollar for the payment of duties.

"Indeed, the provision that required duties to the Government to be paid in gold, *compelled* the citizen to acquire the gold to make the payment. If the right to receive the gold is established under the law, the right to purchase it for the purpose of paying it upon duties. must be established under the law."

So, by its subsequent legislation, Congress has repeatedly recognized, and provided for, the subsisting actual difference between the dollars.

The Act of March 17, 1862, authorized the purchase of coin with Treasury notes on the most advantageous terms. The Act of June 17, 1864, declared that thereafter loans of coin should not be made *unless made payable in coin*; thus assuming the legality of all coin loans. The Act of March 10, 1866, required all returns of income to state whether made in Legal Tender currency or coin; and if in coin, then the Assessor was to increase the assessment to the equivalent income in paper. And so the Act of March 10th, 1866, Chapter xv, § 4, assumed loans of coin to be valid; and the various Acts of 1861-2 authorized loans, some to be paid specially in coin, and others not.

B. *The Practice of the Government.*

The Government has, by its practice also, uniformly kept in view a distinction in value between coin and Treasury notes.

It has some loans payable specially in coin, and others payable in lawful money generally; it borrows coin to be repaid in coin, and Treasury notes to be repaid in Treasury notes. It daily issues bills, checks, and obligations, payable in "gold" and payable in "dollars" simply, *i.e.*, in currency.

It keeps its accounts of specie and currency distinct, and reports each separately. It sells commodities for coin only, and buys and sells coin for currency. It estimates taxes on sales of gold according to the market value of the gold. In all returns of taxes and income it requires coin to be turned into the equivalent currency. It taxes all legacies of coin at their equivalent in currency, and receives only coin for duties.

And it is not a new thing for Government to recognize a distinction in the value of dollars. For ever since the coinage was debased in 1834, Government has forfeited goods for under valuation, where, as frequently happened, the invoice values were reckoned in the dollar of the earlier coinage, instead of in the dollar of the reduced coinage: and for some years advertised for, and purchased, at a premium, the dollars of the earlier coinage.

Some Judges have assumed that "the value of neither coin nor paper dollars is intrinsic, but derived from the omnipotent fiat of Congress in ordaining them to be a legal tender, by infusing, into these inanimate and almost valueless things, the vitality of a circulating medium, vesting them with a magic and almost incalculable value." 2 *Duval*, 74.

If the value comes only from the omnipotent stamp of Congress, that is an end of the case; for its stamp upon a scrap of paper would really make such paper the equal of a coined dollar. Such a Government may well be styled "omnipotent."

But inasmuch as this is not true, and there are "dollars" of different values in fact, and a recognition of such difference is not *forbidden by any statute*, this difference is to be regarded, unless repugnant to some great principle of public policy.

FIFTH POINT.—There is no reason or warrant for holding the different dollars of equal value in law; nor for refusing to recognize the actual existing difference in their values.

It has been claimed that the "law could not permit a discrimation between the coin and paper dollar without allowing its authority to be substantially annulled."

Well, if the greater and the lesser dollars are to be regarded as of the same value in law, what *must* follow?

A. lends B. 1,000*l.* sterling, worth to-day $7.000 in Treasury note dollars. By this doctrine, he can recover for his 1,000*l.*, only $4,844.

So held, 11 Allen, 369. 45 Barbour, 578.

A. dies, leaving among his effects 100,000 gold dollars. His administrator takes them, exchanges them for 200,000 Treasury note dollars, distributes to A's heirs, in Treasury notes, one half of this sum, and pockets the residue.

One of the cases now before the Court is, I believe, like this.

An army officer seizes 100,000 gold dollars as enemy's property, exchanges it for 200,000 Treasury note dollars, and accounts to his Government for only 100,000 of these dollars: and retains the residue for himself.

I deliver $10,000 in coin to a carrier. He may sell the coin for $14,000 of Treasury notes, tender me $10,000 of these notes, and so discharge himself and keep the balance.

So held in Ohio.

I deposit $10,000 in coin for safe keeping with my banker. I go for it next week, and, if he pleases, I must be content to take $10,000 of Treasury notes.

So held in Wisconsin.

My broker collects my Government coupons in gold, and, according to this doctrine, pays me the legal equivalent when he hands me over *the same nominal amount of currency dollars.*

You send your clerk with your gold to pay duties and he sells it, pockets the premium and returns you the like sum in Treasury notes, and you must rest satisfied.

And then, finally, as you must pay your duties in coin, you sell your goods at a reduced price for coin; and the buyer takes them and counts you out the reduced price in Treasury notes.

And so on, indefinitely, through all the transactions of life.

Of course, such monstrous injustice is appalling. It is so obviously against, instead of for, public interest and policy, that learned justices have sought to distinguish between the rule for torts and contracts.

This reluctance, however, to carry out to its logical results the notion that "the policy of the law requires the Courts to insist upon the fiction of the equality of dollars" only indicates the fallacy of the notion.

The argument is, that, as the Treasury note is only made a legal tender in payment of debts, it need not therefore be received in satisfaction for torts.

True, indeed; *for there is no legal tender for a tort.* No moneyed relief whatever in respect of it can be had until damages for the tort are computed. You can only compensate for torts by turning them into debts. If these notes are a legal tender in payment of debt, *then the debt* is met by payment in such notes, whether it arose in tort or contract. *The question is always how much should be paid in that article in which the payment may be made—made whether the claim was for an injury, a purchase, or a promise.*

If, to sustain the credit of the Government money, it be necessary that the paper dollar be treated as the equal of the coin dollar, then this is as necessary in estimating damages for a conversion as for a loan. If this necessity will not permit one to distinguish between these dollars when he loans coin, it cannot permit him to distinguish between them when he sells it.

It cannot be that when a man converts 1,000 barrels of flour the damages are to be estimated at the price of the flour in Treasury note dollars; while if he converts 1,000 coined dollars the damages are to be estimated at merely 1,000 paper dollars. That is, that for the flour, he must pay damages estimated at its *real* value: but for the coin, he need pay only to the extent of three-fourths of its value.

Either the law and public policy requires all dollars to be regarded as of equal value in law, and then the results indicated must follow ; or contracts with reference to the actual difference in value are to be sustained.

SIXTH POINT.—But the true object and policy of the law is to recognize the actual differences which exist between the different dollars.

The debts of the country were, with scarcely an exception, at the time the Legal Tender Act was passed, payable in "dollars" simply, *i. e.*, in what the law might determine to be dollars. To make Treasury notes "dollars," and thus meet those debts, (and dues to the Government), was to give these notes every possible value, and create for them every possible demand, while violating no contract and establishing no forced valuation. Once issued, it was unavoidable that men should contract, deal and compute, with reference to the actual available value of these notes; and, to have attempted to prevent this, by

insisting that this Treasury note dollar should be deemed equal to the coin dollar, was to repeat a legislation which has always failed, and to have decreed a forced circulation and valuation which would have jeoparded the credit of the country and the chances of its new financial plan.

Congress did propose, in December, 1864, to enact the equality of the dollars, and to declare "that thereafter no difference in value should be allowed between them." The mere threat of such legislation produced an alarm which required the scheme to be abandoned.

Indeed, to ignore a distinction for which Government itself insists, and upon which all trade is based, not only cannot help Government credit, but injures it, by creating uncertainty and helping dishonesty. *Fides Reipublicæ Stabilitas.*

SEVENTH POINT.—These different dollars are not made of the same value by calling them by the same name.

The confusion about this question arises, I submit, from treating *different things as the same thing because they are called by the same name:* and from failing to bear in mind that, in estimating what should be paid in articles of different value but having the same name, the estimate should always be made in the variety *of least value, since in that the recovery may be discharged.*

It is not in the case of dollars alone that we have different measures of space or quantity, or value known by one name.

A month, formerly meant by law in New York four weeks; now it means, (by statute), thirty days. A bushel is, by statute, a certain weight in grain or corn, what-

ever its measure; and is so computed in law, unless "the parties have otherwise agreed" (1 Hill, 102). So, our ounces and pounds vary, in different trades; and the ton, which is 2,240 pounds in England, (and formerly here), is now by statute 2,000 pounds. But when a party contracts to deliver ounces, pounds, or tons, or bushels, or to pay in months, if he expresses in his contract *which ton* or bushel, ounce, pound or month, is intended, the agreement is always enforced *as expressed*; and, where the contract fails to express what was intended—as, for instance, where it calls for tons simply (by statute 2,000 pounds each), when what was intended was tons of 2,240 pounds,—the parties may have the contract reformed so as to express the true intent. (9 Paige Ch. 195.)

The fallacy of confounding the distinctions between dollars consists in assuming that because they are equally good for a certain and most important purpose, (that of meeting contracts payable in dollars generally), they are therefore the equivalent of each other. A debt is the amount due in "dollars" merely; the Treasury note meets the debt *because it is a dollar, not because it is the equal of a coin dollar;* because it is one of the class that the contract calls for, *and thus comes up to the contract,* not because it is the equal of the best of its class. On a debt of one hundred gold dollars, and hundred lawful dollars, the same amount is not now due; the same number of dollars is due, but not of the same kind. Just as a dozen large eggs and a dozen small ones are equally good to meet an agreement to deliver eggs simply. Both are eggs, but not therefore in all respects of equal value, for only the one will satisfy a contract for large eggs.

EIGHTH POINT.—But even if the different dollars were of the same intrinsic value, parties should be

left at liberty to discriminate between them.

Why should not parties be at liberty to discriminate and contract with reference to a difference between the coined and paper dollar, even if they were of the same *intrinsic* value?

We frequently hear of sales of Washington cents, and of dollars of certain years' coinage, at very high prices.

It was never suggested, before the Legal Tender Act, that such sales were not legal, and that if a man agreed to pay fifty dollars for one dollar of the coinage of the year 1808 he should not pay it.

So, at times when gold is being shipped abroad, double eagles will command a premium over smaller gold coins, because of the greater facility with which they may be counted, handled and packed. But it has never been suggested that an agreement to pay a premium for double eagles, although the payment was in coins of intrinsically the same value, could not be enforced, for the reason that "the law cannot permit a discrimination between the "different dollars, without allowing its authority to be "annulled."

NINTH POINT.—The true meaning of an obligation to pay "one thousand dollars in gold" is, that that the debtor will pay *one thousand gold dollars;* not so much gold as equals one thousand lawful i.e. Treasury-note dollars.

It is conceded that (in New York and some of the other States), the limit of recovery upon notes payable for a fixed sum in commodities is the sum named. That is, upon a note to pay "one thousand dollars in flour at ten dollars a barrel," the debtor has the option of deliver-

ing the one hundred barrels of the flour, or of paying the money; and no more than one thousand dollars can be recovered thereon.

But, in such cases, there can be no question as to what is meant by the contracts. They are contracts payable in a commodity *wholly distinct, and which has a different name, from the money* to be paid; and the cases fix only the measure of recovery on such contracts. All they establish is, that if the contract means "I will pay so much coin as equals one thousand dollars," then one thousand dollars is all that can be recovered upon it; which no one will dispute.

Now, to claim that when a man binds himself to pay "one thousand dollars in gold or silver coin," the parties mean so much gold or silver coin as amounted in value to one thousand lawful (Treasury-note) dollars, seems to me preposterous. Neither the nature of the transaction, the course of business, nor the words themselves, justify that construction.

I have before me a Government certificate in these words: "It is certified that 100 dollars have deposited with the Assistant Treasurer of the U. S. in New York, *payable in gold*, to the bearer."

Does that mean that the Treasurer will pay so much gold as equals one hundred lawful (i. e., Treasury-note dollars; or does it mean that he is to pay *one hundred coined* dollars? Is it properly to be met by paying *seventy-two* coined dollars, the rate of the day, or, does it call for *one hundred* coined dollars?

Or, when a dealer writes to the Director of the Mint: "Send me one thousand dollars in double cents," does he not mean 50,000 double cents instead of 70,000; the latter being the real equivalent in value of one thousand Treasury-note dollars? *

Or, when a man promised to pay one hundred dollars

* A double cent is intrinsically worth only about as much as *one* copper cent of the earlier coinages, *i. e.*, about seventy double cents can be purchased for one Treasury note dollar.

in Confederate currency, did he mean a wagon load of paper, equal in value to one hundred Treasury note dollars; or did he mean he would pay one hundred of the Confederate dollars?

To state these questions, I submit, is to argue them.

The Supreme Court of Connecticut held that a note to "pay $88 in bank bills current in Norfolk" was a contract to deliver that nominal sum in such bills, and that only their value was due on it (3 Conn. 273). So the Supreme Court of Illinois held (12 Ill., 190, 14 Ill. 105): of Iowa, (16 Iowa, 324): of Tennessee (7 Humphrey, 33): of Arkansas (4 Ark., 175): of Texas (1 Texas 373): of Pennsylvania (10 S. & R., 93): of the United States (8 Peters, 198).

When the contract is for an amount of dollars *in a comodity*, the number of dollars is the measure of recovery if the debtor fails to deliver the commodity. *When it is for a partiular sort of dollar*, the measure of recovery is for the value of *that dollar*.*—(Robinson *vs.* Noble, 8 Peters, U. S., 198).

TENTH POINT.—The weight of authority is *now* in favor of the recognition by the Courts of the existing distinction in value between the different dollars.

New York: 49 Barb., 394, 508; 45 Barb., 511; 50 Barb., 520; 35 How., Pr. Rep. 9.

* Where the "Currency," at the time of making the obligation, is of equal value with lawful money, the contract is properly construed to mean lawful money: but when it is depreciated below the value of lawful money, the rule of the text applies. This has more generally been the case in the West and South: and most of the cases are therefore found there. Conversely, if there be two lawful dollars of unequal value, the measure of recovery on a contract specifically for the dollar of superior value, must be its value in the dollar of least value in which the debtor can discharge the recovery.

Pennsylvania: 54 Penn., 73; 52 Penn., 109.
Illinois: 34 Ill., Rep. 355.
Massachusetts: 14 Allen, *Seers* v. *Dewing*; *Cushing* v. *Wells*, *Bowditch* v. *Soltyk*, 3 Am. Law Review, 168-9.
California: 28 Cal., 410, and numerous later cases.
Indiana: 27 Ind., 426.
Kentucky: 2 Duval, 103, 2 W. P. D. Bush, 534.
U. S. Circuit Court, Penn., Grier, J.

Ground Rent Cases.

U. S. Circuit Court, New York: Nelson & Hall, J J.. 5 Am. Law Reg., *N. S.* 45-49.
U. S. Dist. Court, Maine: 26 Law Rep., 564.
Supreme Court, Dist. Columbia: Thompson v. *Riggs*, MSS.
Nova Scotia: Supreme Court, 4 Am. Law Reg., *N. S.* 376.

And *this* Court seems to have so considered years ago.

For when, in 1842, the State of Arkansas took bonds payable, some in "dollars" simply, and others for so many "dollars in specie or its equivalent," at a time when the notes of the State Bank were a legal tender for all debts due the State, the Supreme Court of the United States held, that while these notes were a lawful tender in satisfaction of a judgment recovered by the State, the State was not bound to receive them for the bonds payable "in specie." (Woodruff *v.* Trapnall, and Paup *v.* Drew, 10 Howard, U. S., 190, 223-4.)

And Thompson *v.* Riggs, 5 Wallace, 178, would seem to be to the same effect.

ELEVENTH POINT.—Congress has no power to restrain private citizens from contracting with refer-

ence to the dollars it puts forth; nor to prohibit the State Courts from giving effect to contracts in respect of such difference.

A determination by this Court, that contracts made with reference to the actual difference between the coin and Treasury note dollar cannot be enforced, must lead to the greatest private injustice—to embarrassment in every department of trade—to the prevention of foreign loans and credits—and to the depreciation of government securities. For upon what possible principle can government be expected to pay coin after it has been established that the law and public policy forbids any discrimination between coin and paper? With what propriety can Government insist that the Tax payer shall return his income in coin, as worth one third more than if received in Treasury notes, when its law and policy forbid recognizing the difference between the two currencies.

But a decision by this Supreme Tribunal that men may contract with reference to the existing difference between the currencies, will relieve trade from needless embarrassments and risk, and open the way to sound dealings; and by establishing justice, will strengthen the credit and prosperity of the whole nation.

CLARKSON N. POTTER,

of Counsel.